

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
for the Use and Benefit of HARRIS PACIFIC
NORTHWEST, LLC,

Plaintiff,

v.

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA,
a Connecticut corporation,

Defendant.

And

WALSH CONSTRUCTION COMPANY, an
Illinois corporation,

Intervenor.

No. 3:21-cv-05285-BHS

JOINT STATUS REPORT,
STIPULATION, AND
ORDER RE CONTINUED
STAY OF
PROCEEDINGS

COME NOW, Plaintiff Harris Pacific Northwest, LLC (“**Harris Pacific**”), Defendant Travelers Casualty and Surety Company of America (“**Travelers**”), and Intervenor Walsh Construction Company (individually “**Walsh**” and collectively, the “**Parties**”) through their counsel of record, to present the following stipulation for a continued stay of proceedings and a continuance of any court deadlines related to the above-captioned action.

STIPULATION AND ORDER RE STAY OF
PROCEEDINGS - 1
[CASE NO. 3:21-cv-05285]

OLES MORRISON RINKER & BAKER LLP
701 PIKE STREET, SUITE 1700
SEATTLE, WA 98101-3930
PHONE: (206) 623-3427
FAX: (206) 682-6234

1 The Parties stipulate to the following facts:

- 2 1. A Complaint was filed by Harris Pacific in the above-captioned action.
- 3 2. The above-entitled action concerns a Miller Act Claim for subcontract work by
- 4 Harris Pacific for Walsh.
- 5 3. The subcontract work concerns a construction project where Walsh is acting as the
- 6 General Contractor and for which the Department of the Navy – Naval Facilities
- 7 Engineering Command Northwest (“NAVFAC”) is the Owner.
- 8 4. Walsh has submitted requests for equitable adjustment to NAVFAC, hereinafter
- 9 referred to as the “**Owner claims.**” The Owner claims include Walsh’s own
- 10 requests for increased costs and time attributable to NAVFAC, and the Owner
- 11 claims also include the updated claim from Harris Pacific that was submitted to
- 12 Walsh on or about April 15, 2022.
- 13 5. Travelers is the surety for Walsh’s payment bond submitted pursuant to the Miller
- 14 Act.
- 15 6. Walsh submitted Harris Pacific’s claims to NAVAC together with Walsh’s own
- 16 claim and claims of other subcontractors on the same project. Having previously
- 17 obtained some relief from the Government based on project delays and impacts
- 18 attributable to NAVFAC, Walsh supports Harris Pacific’s entitlement to equitable
- 19 compensation from the Government to the extent that the mechanical subcontractor
- 20 sustained cost impacts from the same issues. On September 30, 2022, NAVFAC
- 21 informed Walsh that, due to the complexity of the issues identified in the claim as
- 22 well as audits to be performed, the Government could not issue a final Contracting
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1 Officer's decision before March 30, 2023. However, on March 31, 2023, the Navy
2 advised Walsh that it would need additional review time to issue a Contracting
3 Officer's Final Decision, advising that such a decision will be issued on or before
4 October 31, 2023.
5

6 7. The undersigned parties previously agreed to stay the above-entitled action to allow
7 for the NAVFAC Contracting Officer to issue a determination of the Owner claims.
8 While Harris Pacific has not yet seen much progress with a Government audit,
9 Harris Pacific gives NAVFAC the benefit of the doubt agreeing to extend the stay
10 of the above-entitled action for an additional seven (7) months to allow for a
11 determination of the Owner claims.
12

13 8. As outlined in the previous Status Report, Walsh notes that Article 11 of its
14 subcontract with Harris Pacific (attached as Exhibit B to Harris Pacific's
15 Complaint) requires the subcontractor to stay and suspend any legal action against
16 Walsh and Travelers until Walsh's claims against NAVFAC have been adjudicated.
17 Harris Pacific responds that such language in the subcontract cannot support
18 extension of the subcontractor's Miller Act rights for an unreasonable period of
19 time and is also conditioned upon Walsh diligently and expeditiously pursuing a
20 pass-through claim on behalf of Harris-Pacific. The parties do not believe that this
21 issue needs to be decided by the Court at this point, however, because Harris Pacific
22 is willing to accept a further seven-month stay as provided herein.
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24 9. The Parties further agree that by entering into this stipulation, neither Travelers,
25 Walsh, nor Harris Pacific is waiving or releasing its rights and defenses under the
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1 Miller Act or under Article 11 of the subcontract, including but not limited to
2 Walsh's contractual right to demand arbitration of any remaining claims between
3 Walsh and Harris Pacific.
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5 10. By entering into this stipulation, the Parties are attempting to avoid unnecessary
6 costs and fees and neither party waives any claims, counterclaims, affirmative
7 defenses, or defenses, and all such rights are expressly reserved.
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9 11. Based on the above facts, the Parties jointly move, stipulate, and agree to, entry of
10 an order by the Court in the above-titled action:

- 11 a. staying proceedings for seven (7) months;
12 b. continuing any deadlines for seven (7) months;
13 c. requiring the Parties to file with the Court, no later than seven (7) months from
14


15 the entry of the order below, a joint report regarding the status of the Owner claims, and the
16 Parties' positions as to any further extension of the stay and continuance.

17 DATED this 10th day of May, 2023.

18 **AHLERS CRESSMAN & SLEIGHT**
19 **PLLC**

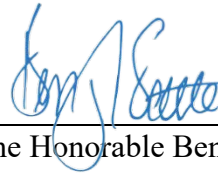
OLES MORRISON RINKER & BAKER
LLP

20
21 By: /s/ Lindsay T. Watkins
22 John P. Ahlers, WSBA #13070
23 Lindsay T. Watkins, WSBA #43012
24 Lindsay.Watkins@acslawyers.com
25 John.Ahlers@acslawyers.com
26 1325 Fourth Avenue, Suite 1850
27 Seattle, WA 98104-2573
28 Phone: (206) 287-9900
Fax: (206) 934-1139
*Attorneys for Defendant and for Intervenor
Walsh Construction Company*

By: 
Douglas S. Oles, WSBA #9366
Nicole Wolfe, WSBA #45752
oles@oles.com
wolfe@oles.com
701 Pike Street, Suite 1700
Seattle, WA 98101
Phone: (206) 623-3427
Fax: (206) 682-6234
Attorneys for Plaintiff

Pursuant to the above stipulation, this action and all related deadlines are STAYED for a period of seven (7) months from the date of entry of this Order. No later than seven (7) months from the date of entry of this Order, the Parties shall file with the Court a report regarding the status of the Owner claims referred to in the stipulation of the Parties and the Parties' positions as to any further extension of the stay.

IT IS SO ORDERED this 11th day of May, 2023.




The Honorable Benjamin H. Settle

Presented by:

**AHLERS CRESSMAN & SLEIGHT
PLLC**

**OLES MORRISON RINKER & BAKER
LLP**

By: /s/ Lindsay T. Watkins
John P. Ahlers, WSBA #13070
Lindsay T. Watkins, WSBA #43012
Lindsay.Watkins@acslawyers.com
John.Ahlers@acslawyers.com
1325 Fourth Avenue, Suite 1850
Seattle, WA 98104-2573
Phone: (206) 287-9900
Fax: (206) 934-1139
*Attorneys for Defendant and for Intervenor
Walsh Construction Company*

By: 
Douglas S. Oles, WSBA #9366
Nicole E. Wolfe, WSBA #45752
oles@oles.com
wolfe@oles.com
701 Pike Street, Suite 1700
Seattle, WA 98101
Phone: (206) 623-3427
Fax: (206) 682-6234
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

Lindsay T. Watkins
Jonathan P. Ahlers
Ahlers Cressman & Sleight PLLC
1325 Fourth Avenue, Suite 1850
Seattle, WA 98104
Emails: Lindsay.watkins@acslawyers.com
John.Ahlers@acslawyers.com

*Attorneys for Defendant Travelers Casualty and Surety Company of
America and Walsh Construction Company*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: This 10th day of May, 2023, at Seattle, Washington.

/s/ Christine J. Smith
Christine J. Smith, Legal Assistant